

REMARKS

This Amendment is being filed in response to the Final Office Action mailed September 26, 2007, which has been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

By means of the present amendment, claims 1-2, 4-5, 7, 9, 12-17, 23-24, 27-28 and 30 have been amended for non-statutory reasons, such as for better form including beginning the dependent claims with 'The' instead of 'A'. Claims 1-2, 4-5, 7, 9, 12-17, 23-24, 27-28 and 30 were not amended in order to address issues of patentability and Applicant respectfully reserves all rights under the Doctrine of Equivalents.

In the Office Action, claims 1-2, 4-7, 9, 15-17, 27-28 and 30 are rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent No. 6,477,176 (Hamalainen). Further, claims 12-13 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Hamalainen. Claim 14 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Hamalainen in view of U.S. Patent No. 5,341,397 (Gudmundson). Claims 23-24 are rejected under 35 U.S.C.

§103(a) as allegedly unpatentable over Hamalainen in view of U.S. Patent No. 6,393,000 (Feldman). It is respectfully submitted that claims 1-2, 4-7, 9, 12-17, 23-24, 27-28 and 30 are patentable over Hamalainen, Gudmundson and Feldman for at least the following reasons.

Hamalainen is directed to a method for transmitting speech and data on the same traffic channel. As specifically recited throughout Hamalainen, such as the Abstract "When it is indicated that there is no more [speech] information to be sent, the data stored in buffer means are sent until there is no more data to be sent or until it is indicated that there is [speech] information, speech or other data to be sent." (Emphasis added) That is, in Hamalainen, the channel includes EITHER speech OR data, but NOT BOTH.

In stark contrast, the present invention as recited in independent claim 1, and similarly recited in independent claims 7, 12, 14-17 and 27-28, amongst other patentable elements requires (illustrative emphasis provided):

the first station further comprises a
controller for generating an output data stream
comprising the real-time data, the controller

also allocating the non-real-time data to the output data stream when the data rate of the real-time data is less than full data capacity of the dual mode channel so that at least one frame of the output stream comprises combined data including both the real time data and the non-real time data, wherein the output data stream is transmitted by the transceiver over the channel including transmission of the combined data when the data rate of the real-time data is less than the full data capacity of the dual mode channel.

Transmitting both real and non-real data on the same channel in one frame of the output stream is not even taught or suggested in Hamalainen, let alone teaching or suggesting to do so when the data rate of the real-time data is less than full data capacity of the channel, as recited in independent claims 1, 7, 12, 14-17 and 27-28. Rather, Hamalainen transmits (non-real time) data when (real-time) speech is absent, and is silent about transmitting both based on channel capacity. Gudmundson and Feldman are cited to allegedly show other features and do not remedy the deficiencies in Hamalainen.

Accordingly, it is respectfully submitted that independent claims 1, 7, 12, 14-17 and 27-28 should be allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2, 4-6, 9 and 13 should also be allowed at

least based on their dependence from independent claims 1, 7 and 12.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By *Dan Halajian*
Dicran Halajian, Reg. 39,703
Attorney for Applicant(s)
December 24, 2007

THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101